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TRUMP'S SHOWDOWN

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Jack Goldsmith is an attorney and professor at Harvard Law School. Previously, he served under President George W. Bush, first as an adviser to the Department of Defense's General Counsel, and then as an assistant attorney general heading the Justice Department's Office of Legal Counsel.

This is the transcript of an interview with FRONTLINE's Jim Gilmore conducted on July 24, 2018. It has been edited for clarity and length.

TEXT INTERVIEW: Highlight text to share it.

[The film is about] this idea, though, of how Trump had a very different training in the law than D.C. law.

... Trump clearly views lawyers and law instrumentally. In his business, it's something that he has learned to use to his advantage. Whether it's not paying bills and having someone have to pay for the expense to come after him, whether it's violating the law and forcing someone to prosecute him or to fine him before he behaves, whether it's exploiting loopholes in the law, he clearly has a view of the law that is something to be used to his advantage, either a hurdle or a tool he can use to help him to his advantage. It's not something, I think, that he has any kind of respect for. That's pretty obvious.

The idea that he was involved in about 4,500 cases while he was in business, how exceptional is that?

I don't know how exceptional it is compared to other people in big-time real estate in New York. But it's extraordinary on its face to be involved in that many lawsuits, to have the lawyers that he must have had to defend him or to represent him. Just—I can't even imagine the numbers. And it really means that he takes what Holmes calls—Oliver Wendell Holmes talked about the bad man of the law, and how one way to view the law was through the view of how the bad man would view the law and how the bad man would take advantage of the law and exploit the loopholes. Trump has that attitude.

Explain it. Explain what the rule of law is, and explain, from what we know, how Donald Trump seems to view it.

Well, the rule of law is an abstraction, and it's an ideal. But the basic idea is that we are a government of law and not men, to use the old phrase. What that means is, is that there is this impersonal force that can be traced back, either to our Constitution or to other sources of law, that binds the government and individuals and their behavior in society, and that the law, in theory, is not something that's subject to anyone's personal whim, whether it's a New York real estate developer or the president of the United States.

It's supposed to be this impersonal force that guides behavior, both public and private persons. But I don't want to exaggerate it, but Trump is not the only person in the world who views the law this way. I think many people in business view law and lawyers as hurdles, something that has to be dealt with, so they take an attitude that it's just like another cost of doing business. I think that's the way Trump sees it. He's not unusual in having that attitude, I think. I think he's an extreme case.

Extreme how?

Just because he appears to be extreme in avoiding legal obligations. I mean, it's an everyday occurrence for him, avoiding legal obligations, forcing others to make him comply, circumventing rules whenever he can. He just seems to do it a lot more often, and it seems to have been a defining part of his career.

... When you saw him on the campaign, for instance—and I'm doing this chronologically because it will fit in different places. But during the campaign, he would rail against judges that disagreed with him, that he had cases against. He would rail against the DOJ and institutions in general. It's a thing that drew people to him. But it was very much against the norms, certainly for a president, it seems, somebody who was running for the presidency. When you viewed him and the way he talked about these issues, what did you think?

Just to clarify, are you talking about on the campaign trail where you started or as president?

On the campaign trail, before being president.

Yeah. As you said, some people were attracted by the fact that he was railing against judges and lawyers and the Justice Department and the like. I think Trump was onto something there, like he was onto something in other elements of his campaign, in connecting with an undertow in American society that has a hostility toward elites, courts, lawyers. Justice Department officials are seen as elites, as these impersonal forces who are shaping people's lives in ways that seem very distant. I think he was onto something in attacking those institutions, because it clearly drew him support in some quarters.

That said, it was shocking to see a presidential candidate attack core American institutions. It's just not something that's typically done. I can't think of an example so extreme. Of course there have been candidates who—just think of Richard Nixon running against the Warren court. There have been candidates, and I think it's perfectly fine and within sort of the detectible range of norms and behavior, for presidents to criticize institutions and to propose change to institutions. That's within normal discourse. But it was both—again, the extremity of his claims, the number of them, and the really harsh, sometimes vile language that he used, it really took it to a different dimension.

Did you see a danger there?

I saw less danger when he was a candidate than when he was the president. As a candidate, even as a presidential candidate, if he had lost, I think those attacks would have largely subsided, or certainly wouldn't have had the same salience as they had. I think it's much less dangerous when he's doing this as a candidate than when he's the president. When he's the president of the United States, it's entirely different. He's speaking for the nation. He has power over many of the institutions he's attacking, so it's very damaging and very corrosive when the president of the United States attacks courts in vicious ways, doesn't show respect toward courts as president, just because it's bad on its face. It puts those judges in a very difficult position, and it creates or enhances the corrosive environment of our society.

So Trump comes to D.C. He wins, and he comes to D.C. Just sort of as the entrance to where we're going, how is his view toward the law, toward Washington, and how Washington views the law, and how James Comey would view the law, and how somebody who has been working

for 30 years within the DOJ or the FBI views the law? Here's a president coming with a very different view. What's his view? Why does it differ?

And how this will sort of set the scene for us?

Well, he came into office as a populist president, and part of his agenda was to rail against and promise to change elite institutions, elite institutions that, on the campaign trail, he said, were part of the problem with America recently and that he was going to fix. You know, one of those elite institutions is the law, whether it's the Supreme Court and the lower federal courts, or it's the laws embodied in the executive branch and the Justice Department, which is the part of the government that enforces and ensures that the government abides by the law.

So he came into office. Of course those institutions, the Justice Department and the FBI, are under his control the day he becomes president, so he comes into office with an agenda, an open agenda, to shake up, to put it mildly, these elite institutions, including the institutions under him, which are charged with enforcing and complying with the law. It was very awkward.

Same thing is true, by the way, of the intelligence community. Exactly the same thing, which is not really law enforcement, but national security and counterintelligence. Same thing. They really are an elite institution in our country. They are very important to our national security. But they also are widely disliked by Americans, or at least some Americans, and Trump came in criticizing and pledging to disrupt them. He started doing that very early in his tenure. And again, this is an institution that is under his control, so it's especially difficult for the people working in those agencies.

I'll take you to some of our chronology here. [Then-FBI Director] James Comey has dinner with the president, dinner for two, just the two of them, which surprised the hell out of Director Comey. He asked for loyalty during this, several times. You know the whole story of this whole thing. Take us into Jim Comey's mind at that mind—why that would be odd, how he would see that as an assault on the norms. Take us to that question of sort of, this is where we first see that head-to-head.

Well, first of all, there's this sense that the people who work in the executive branch are, in some sense, loyal to the president. In some sense, even Comey, who wasn't appointed by Trump, he still works for the president. He's still part of the executive branch of which the president is the head. He, in some sense, has to take orders from the president, because the president ultimately controls law enforcement and controls the arc of national security. So in some sense, in a very real sense, Comey works for him.

Comey was an appointee of Obama. He wasn't someone appointed by Trump. He has a 10-year term. The reason Congress made the FBI director have a 10-year term was so the FBI director would be seen and would have the appearance of more independence. This was all part of the post-Watergate effort to make the Justice Department somewhat more independent by norms, not by law, ultimately, because ultimately, the president of the United States has constitutional control over those branches. It's a complicated set of background norms, where these people all work for the president, and they're in some sense, in varying degrees, loyal to the president, or at least they have to share his agenda and operate to pursue his agenda. That's the background in which Comey goes into this.

A lot of people in the Justice Department, for example, the attorney general, who's appointed by the president, is often the president's confidant, and will often be loyal to the president in some sense simply naturally in terms of their prior relationship. Bobby Kennedy was the attorney general when his brother was president. He was clearly loyal to his brother, and his brother didn't need to ask for loyalty.

I just want to start off by saying that there is this sense that they work for the president. That said—and I have not talked to Comey about this particular episode, but I've read his book. That said, this is a very awkward situation, because the people around the president in his campaign and perhaps even in his administration, at that point, have been under investigation related to Russian interference in the election and possible other connections to the Russians, and Comey has a duty to conduct—and he was in charge of conducting that investigation.

So there's already a sense, when the White House or when the president or when people around the president are being investigated, there's a very important sense, post-Watergate, that the White House is supposed to stay out of that. And that's a norm that's been pretty carefully—it's reflected in lots of documents that every president has articulated, including Trump, by the way. It's been pretty steady practice since Watergate, that the White House and the president stays out of ongoing investigations concerning the White House. That's the other piece of the background.

So when Comey walks into that meeting, and the president asks for loyalty, that's not something any president would do. To ask for loyalty in that situation is, first of all, self-defeating. No one in Comey's position could have said, "Yes, sir, I give you my loyalty." His duty to the law and to the Constitution was to conduct this investigation, and it was to maintain his independence from the president with regard to that investigation. For the president to ask that was such, I'm sure, a shocking violation of the accepted practices about the relationship between the White House and the FBI concerning an investigation of the president. I'm sure Comey must have been shocked.

Let me also add—and this is typical of Trump—it was also not in Trump's interest. If he had any sense at all, if any mature person or any seasoned Washington lawyer or adviser had been advising him to do that, they would have told him: "What a stupid thing to do. It's not in your interest to do that. It is not going to help you with Comey. It's going to hurt you with Comey. It's going to draw you into legal question. It's going to make the investigation harder for you." All of these things were completely predictable consequences of him asking that question and later firing Comey. And yet, as Trump is wont to do, he did it anyway.

**Because why? Why does Trump do it?**

This is one of the great puzzles about Donald Trump. ... Let me back up and say, there are probably a lot of presidents who have wanted their subordinates to be loyal. I know, from personal experience, when the White House was under investigation when I was in the Justice Department, also involving a matter supervised by Jim Comey in a different capacity—he was the deputy attorney general—it is extremely unpleasant. No White House likes it. And every White House would like it to stop and would like the subordinate officials to the president to be more deferential to the president in some sense.

I would also say that I'm quite confident that there are ways—and I know many administrations, including the last three I know of examples of this, there are many examples of presidents letting the attorney general know that there is something that is going on that he's not quite happy

with. You do this in a subtle way. You don't do it in any overt way. Ultimately, it is the president's call to conduct these investigations. But you would never ask for loyalty. You would never overtly say, "Please drop this prosecution; please give this guy a break," because the person under you, any person of integrity in Comey's position would not be able to do that. And it's going to make it worse for the president, because it's going to ramp up the investigation. It's going to cause more friction between the FBI and the White House.

And never do it, of course, unless you're Donald Trump.

This is one of many examples where Trump has opened his mouth and said what he was thinking. Many presidents might have been thinking that, but Trump actually articulates it. ... He doesn't seem to have a filter. Trump doesn't seem to have a filter between what's on his mind and the situation he confronts. He may well have wanted—he clearly did want loyalty from Comey on that matter, and what that probably meant was some relief from the investigation, which he didn't like, for all sorts of reasons. Maybe because it was too close to him; maybe because it called into question the election; maybe because it implied that he wasn't in charge. For whatever reason, he didn't like it. We're going to find out, hopefully later.

But you would never—it's just not in his interest. It's self-defeating for him to ask that question. And that's why so many of Trump's statements are like this. So many of Trump's statements are hurtful because he said them, and they're not going to accomplish the goal. I can give you many examples if you like, but I've been running on. So I'll let you go.

All right. Let's go, move on. ... You know Jim Comey pretty well. You went through wars with him, basically. Describe working with him in the Bush administration. What are his motivations? His willingness to stand up to the president back then, what was that based upon? Is that based upon his belief about the rule of law? Just lay out for us, sort of in the past, what his motivations have been and the way he would act.

Jim didn't have any particular desire or motivation to stand up to the president. That's not something that he or anyone in his position would want naturally to do. It's awkward. It's more than awkward. It's a very difficult situation to tell the president something he doesn't want to hear, in a situation that affects the president directly. So it's not something that he sets out to do.

In the situation of 2004, it was an extremely complicated and extremely difficult situation. But it ultimately came down to the fact that he was convinced that a government program was operating in a way that couldn't be justified under the law and that it wasn't a close case where he might have given deference to the president or to past interpretations. It was an easy, easy case of noncompliance with the law.

In that situation, his duty to the law and to Justice Department norms and principles and traditions required him to basically stick to his guns on what the law was. That caused a confrontation with the White House. He didn't seek the confrontation. We tried very hard to alleviate the confrontation and to reach a position where the program under consideration could comply with the law while at the same time trying to protect national security as much as was possible under the law.

He wasn't looking for a confrontation, but he did feel strongly that it was the Justice Department's job to uphold the law. And in that situation, he thought that it was clear. He may also have thought, because of some things that happened, that the White House wasn't acting in good faith. I

think that probably made his decisions easier. But his basic attitude, he—I said earlier that we shouldn't be too idealistic about the rule of law. Jim tends to be on the idealistic side in his conception of the rule of law, and I mean that as a compliment. He takes the law really seriously as an autonomous force in public life. TRUMP'S SHOWDOWN

And that's what you learned about Jim Comey going through that with him?

That's one of the things I learned. He's also courageous. He has very good judgment. Let me back up and say that. He's also very courageous. In that situation, he exercised what I thought was very good judgment. He gave me very important support at some difficult times with the White House.... So that's what I would say.

And when the president says something like "He's a showboat," what's your reaction?

I don't believe that Jim is a showboat. He could have showboated in many ways that would not have hurt him as much as some of the things he's accused of showboating about. I think that he's actually a person who says what he means, and he's obviously very careful, and he's very thoughtful. He thinks about consequences of actions. But I have no reason to think that any of these things he's acting in bad faith at all.

Just to make sure so we have it, give me one line about what the program was that caused the— ... It was a surveillance program. It had been running since 2001. It had been approved many times over the two years before Comey and I and a few others were working on it. It was extremely unusual to rethink a program like that in the middle of the program, after it had been approved for two years in the middle of a war. But that is how confident we were about the legal problems with it. We thought it needed to be fixed. Great. So the second sort of story we're telling about Comey is the Oval Office meeting, where there's a meeting in the Oval Office. The president scoots everybody out of there except for Jim Comey. ... Just go into that meeting a little bit and describe it.

... The Justice Department and the FBI are conducting an investigation involving Flynn, and the president of the United States is saying, "Please lay off." Now, if the president of the United States is acting with a certain intent, that might count as obstruction of justice. So when he tells Comey, "Please lay off Flynn," or, "Can't you take it easy on Flynn?," certainly that's an enormous violation of norms. That's a clear violation that goes beyond the loyalty request in a particular case, to ask him to stop the prosecution. And especially when the prosecution is focused on the White House itself, that is an unambiguous no-no, not in terms of the law, necessarily, but definitely in terms of norms in the post-Watergate world. Clear violation.

Whether it's a legal violation is actually a close and difficult question, but there's no doubt that it raises large legal issues. ... So when that happens, I'm sure that Comey's alarm bells were going off in a way much louder than they were when he asked merely for loyalty, which was a more ambiguous statement, and it was more abstract. This is the president saying, in a particular investigation concerning someone who was in the White House, "Please lay off." ...

The way he operates, and the way he did this, he tells Jared [Kushner, his son-in-law and adviser], he has to leave, and tells Sessions that he has to leave; that Jim is the only one in the room.

Well, again, it's very hard to interpret that in any other way than just stupid. You're asking the attorney general of the United States? Of course Sessions was recused. So you could say Trump was respecting the recusal of Sessions because he wanted to talk about the Russia investigation. I'm very doubtful that's what he was thinking. But the whole idea of buttonholing the FBI director alone in the Oval Office, first of all, as Comey said in his book, it's a very unusual practice for the FBI director and the president of the United States to have a conversation by themselves. It happens sometimes. It happened in the Obama administration. It happened in the Bush administration. It happens.

But it's an unusual situation, and it's unheard of to talk to the FBI director about laying off an investigation of the White House itself. I'm sure that Comey was flabbergasted with the request. I'm sure he immediately understood the potential legal implications.

The weight of the norms that you're talking about, and the fact that they aren't laws, so Trump might sort of say, "I was elected to go to Washington to break norms."

These norms that we're talking about, the norms of Justice Department and FBI independence from the White House, especially when there's an investigation of the White House, you asked about the weight of the norms. They're very heavy norms. They are norms that have been written and followed in a very serious way, going back to 1975 or so, when they were first articulated. Even the Trump administration's White House counsel articulated these norms.

Now, the norms as articulated in these documents are about subordinate officials, not the president himself. But every president understands, has understood these norms, and largely abided by them. You could say that Barack Obama—maybe people did say, and I think it's a plausible thing to say—that he violated these norms when, in the middle of Hillary Clinton's investigation, he said, "I'm sure she didn't do anything on purpose to harm national security." That was a violation of those norms. It was in public. It wasn't so close to him, but it was a serious violation of the norms. And indeed, Comey later cited that as a reason why he later took the unusual steps he did. Trump is not the first president to violate these norms, but they're very heavy, serious norms, and he violated them in a very serious way.

The firing on May 9. Again, it's against the norms, but it's not illegal. He sort of points the finger at [Deputy Attorney General Rod] Rosenstein to begin with, in his memo, as being the reason for it, but soon after that changes his story. Take us into the firing and how you viewed it as it was happening, and the lessons that we should understand.

So again, there's nothing illegal about the president firing the FBI director. He has the clear constitutional authority to do that. And he's not the first president to fire an FBI director. That said, he was firing the FBI director in the context of an ongoing investigation of his associates, so it raises the question why he did so. Now, the president gave a whole bunch of different answers. He first pointed to Rosenstein's memo, which said that it was a response to what Comey did during the Hillary Clinton investigation in 2016, which seemed implausible. And then, when, within a day, he changed his story and suggested to Lester Holt [of NBC News] that it might have something to do with the Russian matter. He's given other explanations that it was—that it was conducting—that it was harming his foreign policy, that it was making it difficult for him to improve relations with Russia.



... To the extent that he fired the FBI director because he didn't like the investigation that was ongoing concerning the White House, it was a gross violation of the very norms we just talked about. But there's an important point here, is that the president does have the constitutional authority to do this. These norms are sub-constitutional rules that have grown up to kind of restrain some of the concerns we have about abuse on these constitutional powers that Nixon abused, frankly, that he abused his Justice Department and the intelligence agencies in trying to deflect attention from himself and his subordinates concerning Watergate.

So the norms play a very tricky role here, because no one denies that the president has these authorities. And there are some situations where you want the president to be able to exercise these authorities. The norms are designed to guide that discretion, maybe to raise the cost when the president exercises his constitutional powers....

On a gut level, what did you think when you heard that Jim Comey had been fired?

It seemed like the president, in context, was firing Comey because he didn't like the way he was conducting the Russia investigation. That's what it seemed like. Most people thought, from the beginning, as the president later said a day later, that the Rosenstein memo was ruse or excuse. The president basically confirmed that a day later. It seemed like the president was trying to shut down an investigation of his subordinates that he didn't like.

This, of course, ties in—how high do you want to tie it in? It seemed like that he was maybe trying to protect these officials under him; maybe that he had something to hide. Maybe he was implicated; maybe it concerned the 2016 election. All of these issues were flying around. We still don't know if those issues were what motivated the president to fire Comey. But certainly, there was informed speculation that it may have been that, and that made it seem all the more extraordinary.

And remember, this is all in the context of a counterintelligence investigation of how the Russians influenced the 2016 election and the degree to which they infiltrated and had control over associates of the president in that regard, including, some people think, maybe all the way up to the presidency. We don't know. But in that context, this seemed like a deeply suspicious event.

And the fact that the next day, in come to [Russian Foreign Minister Sergey] Lavrov and [Russian Ambassador Sergey] Kislyak to the White House, and he tells them—he says what he says?

Again, all of these things, on the one hand, seem to confirm that there's a problem. On the other hand, no rational person would do these things if there were a problem. You just don't—if you think that there's a problem that the FBI director is going to uncover about your connection to the Russians, it's not rational. It's not in the president's interest to fire Comey the way he did, as we learned. It got worse for him immediately. Rosenstein appointed [Special Counsel Robert] Mueller, and the investigation expanded. And ever since he fired Comey, it's become much worse for the president. That was entirely predictable.

With regard to meeting the Russians the next day, in a way, that's not something that someone who had something to hide would have done. So in some sense, the optics are absolutely terrible for the president, but the fact that he did it anyway might suggest that he thought that there

wasn't any underlying concern. Or it might just suggest that the president is totally oblivious to the optics. We just don't know at this point. So much of Trump's behavior has had that characteristic. He acts openly in a way that seems to confirm suspicions about him and that no rational person about whom those suspicions were true would do this. So he's confirming the suspicions at the same time he's acting in a way that makes you think, maybe he doesn't have anything to hide, because no one with anything to hide would act that way.

Interesting. Talk a little bit about Rosenstein, kind of between a rock and a hard place, his role in first writing the letter and then being defined as one of the reasons for the firing.

Being used. Pretty clearly being used.

What happens next? What are his motivations? What's the position that he's in? How difficult of a situation is he in?

He is, at this point, in an extremely difficult situation. ... He's the new deputy attorney general. He appointed Mueller after the Comey firing. That was his responsibility. He did that on his own. And at the same time, we will never know, until he maybe gets out of office and tells us, why he wrote the memo that seemed so protectoral a way to—so protectoral in firing Comey. It seemed like that Trump and Sessions basically enlisted that from him and that he was being used as a pawn to get rid of Comey.

We'll never know why he did that. I can imagine and speculate that, if it's your first week on the job, and your bosses, your two bosses, the president and the attorney general, say, "Please write a memo about the things Comey did wrong," and he wrote a memo about the things that I'm sure he genuinely believed Comey did wrong, he may have foreseen that it was going to be used to fire Comey. He may not have thought it through. It may never have occurred to him that the president would basically hold him out and make him responsible for the firing. He may have been very naïve. He probably was trying to accommodate his new bosses and try to tell the truth. He certainly, I think, got played in that situation. And I don't think that was a very admirable episode for him.

But I will say, also, that ever since then, he's acted very admirably. He's shown great fortitude in standing up to vicious attacks by the president of the United States for whom he works, completely outside the realm of acceptable and expected behavior by the president. He has supervised the Mueller investigation by the book. He's reported to Congress. He has either ignored or stood up to both Congress and the president in gentle ways. I think if he'd been any more aggressive, it might be deemed inappropriate.

It is impossible for me to imagine how difficult a situation he is. It makes, I think, what we went through in 2004 seem a lot easier, because this is extended and very public. He's being attacked by the president. And who knows? He knows what's going on in the investigation. He may have all sorts of reasons for concern or not concern; we don't know. But there's this investigation that he's supervising. He's being attacked by the president. None of this is supposed to be happening. His decisions have been admirable and very difficult. ...

You were in a similar enough situation to understand him, his motivations. Take us there. Here's a guy that's worked for the Justice Department and for his country and jobs that show he's a faithful servant to the Constitution. What pressures is he under? And what's motivating him?

Here's someone who's worked in the government as a prosecutor for a long time, and he's really part of the Justice Department culture. It seems, to many, unconvincing, but there really is a rule of law culture in the Justice Department, a sense that the Justice Department is the guardian of the law. They don't always live up to that ideal, but that is the clear ideal that the Justice Department tries to uphold. And again, they haven't always abided by it. But it is a widespread understanding that that's what they're about. And when you're working in the Justice Department, you feel that. And the closer you get to the top of the Justice Department, the more responsibility you feel for carrying out that commitment and those ideals.

So he comes in—I'm speculating. I imagine that he comes into this job, he's thrilled. He's the deputy attorney general of the United States, leading a department that he clearly loves and believes in. And then, basically from day one, he has the hardest problem in the world dumped in his lap, with a whole bunch of unprecedented situations. And his first step, one of his first steps to allow himself to be involved in what seemed to be a ruse for the firing of the director of the FBI, in what may have been an obstruction of justice, is a disaster.

There were stories soon after the firing that he was thinking about resigning, that he was deeply embarrassed and humiliated by it. That sounds plausible to me. On the other hand, he feels, I'm sure, quite keenly the importance of following the rules within the Justice Department, the importance of seeing through this investigation that had begun under the previous administration. He appoints someone to replace Comey of undoubted integrity, George Bush's FBI director, and a man of absolutely sterling reputation. Ever since then, he has been protecting Mueller and basically dealing with these barbs from the president and worse.

I imagine that as time goes on, and I felt this way a little bit when I was in the department, when I got to really difficult point of standing up the Justice Department, it's very hard to do, because again, as I said earlier, you're working for the president. The president appointed Rosenstein. He was a political appointment of the president. He has to feel some sense, if not loyalty, some sense of connection to the president who appointed him. There's definitely that kind of feeling. You work for the president.

But on the other hand, he has these commitments to the law. And at some point, when what the White House is doing is so inappropriate and bad, and when the law is pretty clear, it actually becomes liberating. You could be fired at any moment, but you become more and more confident that you're doing the right thing. And that confidence that you're doing the right thing, it's often hard to know whether you're doing the right thing. Sometimes the law is unambiguous. There's a little wiggle room for the president in certain circumstances. But when it becomes really clear in these incredibly difficult, stressful situations, that the right thing to do is to do X rather than Y, that can be liberating. ...

That was great. When Sessions recuses himself, and when Mueller is appointed, Trump then really goes after Sessions, that famous White House meeting and stuff, for recusing himself.

Right, more than one time.

Yeah. Well, it's still happening. What's going on there? Sessions offers to resign, and then people in the White House realize, wait a minute. How extreme is that? And [tell us], again, what your thoughts on that are.

I'm just not quite sure what the "it" is. What is the "it" again? Sessions recusing himself?

Yeah. For recusing himself because he feels it's against his core belief, which is loyalty.

Yes. I don't know what to say. It's just so bizarre. That episode of the attorney general abiding by the rules of the Justice Department to recuse himself from a matter, and then having the president criticize him for doing so, and basically be on the verge of ordering, or at least threatening, to fire him over doing it, or ordering him to take back the recusal, is so far outside the realm of anything one can imagine a president doing. It's entirely inappropriate. Jeff Sessions is a politician. He's spent most of his life as a politician. It's noteworthy that, as soon as he got to the Justice Department, this person who spent all of his life in politics, one of the first things he did was to consult the Justice Department rules and recuse himself from the Russia investigation. That speaks to how powerful these norms of independence and rule of law are within the Justice Department.

He didn't have any compunction about it, and he came out and gave a press conference about it. It is inconceivable that any attorney general would reverse himself on that under pressure from the president. Jeff Sessions didn't do it. He didn't come close to doing it. He couldn't have done it. The outcry would have been overwhelming, bipartisan, I'm sure. And that is so obvious that it's shocking that the president even asked. It's yet another example of the president doing something that is not going to lead to the results he wants, and that's only going to hurt him.

And the danger here?

I think frankly, most of the danger is to the president himself, because it makes the president look weak. He's got an attorney general not listening to him and doing something that he doesn't want him to do, and there's nothing the president can do about it. It makes the president look like he's got something to hide. It clearly violates these norms of independence. But that said, the fact that the norms are being violated doesn't mean the norms are being eroded.

I would argue that the extraordinary independence that the Justice Department, through Rosenstein and [Director Christopher] Wray and Mueller and to some extent Sessions, when he recused himself, the extraordinary independence that they've showed in the face of these unimaginable, unprecedented attacks by the president, you could argue that they're reinforcing the norms, that the norms are becoming stronger, because the president keeps violating them, but he can't break them down.

He brings [Marc] Kasowitz in, his bulldog from New York. ... Basically, Kasowitz's strategy is, the big point here, is that—so his new lawyer, a guy he had used in the old days for a lot of cases in New York, did clean things up for him, now comes in, and his strategy that they come up with is to attack Mueller. From this point on, attack individuals, not the policy, but it's the individual; that there's the 12 Democrats that are in power, and the fact that they have all had connections that show that there's corruption here. That strategy, and the president deciding in his speeches and his lawyer going after this specifically, says what?

Well, it's not completely unprecedented strategy, in some respects. Every independent counsel that we've had has been attacked as being political, as exceeding his or her mandate. The Clinton lawyers during the Ken Starr investigation made very similar types of arguments against Starr, that his staff was politically biased, that he was on a witch hunt, that he was acting beyond his jurisdiction and acting inappropriately.

It's not unusual for an independent counsel, which is an odd creature in our Constitution, to be attacked. That said, the attacks never came from the top, openly from the president, in so vicious and personal way. That took us to a completely different realm. The first impact that has is on the people involved. It can't be easy for Mueller to be conducting the investigation and for the people under him to be conducting the investigation when they're attacked by the president.

It's kind of hard to explain why, because in some sense, the president could probably order—could order Rosenstein to fire them. Their jobs could go. But in some sense, they're kind of immune from that. They're going to do their jobs. But it's unpleasant in the extreme. And it stays in your gut, I'm confident, when the president is attacking you and saying these vicious things about you, because of course you can't do anything about it.

In the first instance, it has this corrosive effect on the investigation. But again, in terms of whether it helps or hurts Trump's legal position, in some sense it hurts it, because it forces the Justice Department to be more overtly independent, and it forces them to double down. At that point, they can't be seen in cutting any corners to give into this pressure.

Again, it's hard to know whether Trump acts rationally or not. And sometimes his rationality is more successful. Sometimes his strange behavior seems to work better than one might have predicted. I don't think that there's any sense that these attacks on Mueller or Rosenstein or the Justice Department, I don't think that they're designed to end the investigation. He's been threatening on and off, and then he always backs down, for over a year, to fire all these people.

What he's really trying to do, it seems to me, is to discredit it. He knows that there's bad news coming down the road, and he's trying to discredit all of the actors involved, so that when the bad news comes, he will have the situation where half the country thinks that they're discredited actors. That's clearly what's up here, I think.

Speaking as someone who was there for so long, and sort of understands the importance of these institutions, it must drive you nuts.

I try not to be driven nuts by Donald Trump. It's one of the things I'm committed to. So the norms of independence might survive in the sense that the Justice Department seems to be acting with extraordinary independence in the face of these fights. The harder question is whether the legitimacy of these institutions will survive. This really is one of the worst and most corrosive things about what Trump has done. He has set out purposefully to destroy some of the most important institutions in our country. He is trying to openly—and succeeding, to some degree—openly discredit the Department of Justice, the FBI he calls corrupt. He says they're incompetent. The attorney general and deputy attorney general he appointed, he trashes all the time. He does the same with the intelligence community. This is a terrible thing, because the impact on those actors, and the morale in these places as a result of that, is terrible. That's not irrelevant, because we rely on these institutions to both protect us and to enforce the rule of law.

But the long-term consequences I worry are terrible, because these institutions do a lot of things that require trust of the American people. They act in secret a lot of the time, with a lot of process but in secret. They act in ways that we can't always scrutinize, and therefore, we have to trust them. And I fear that the long-term damage he's doing to the reputation of these institutions is going to make it hard for them, when he's gone, to win back the trust of the American people.

It's absolutely vital for them to be able to carry on their jobs. By the way, it's not just the president. It's also House Republicans—not the Senate Republicans, but a handful of people in the House who are really astonishingly, for Republicans, to be attacking the intelligence community and the FBI. I mean, the world's turned upside down. And the deputy attorney general, who's a Republican, the world's turned upside down. But that's the real danger of Trump.

I worry less about the norms of independence, which I think are going to come out of this stronger, and more about whether those institutions will be weakened, vis-à-vis the American people. So I think the Justice Department and the FBI will emerge from this in terms of their independence being stronger, vis-à-vis the president and the White House, because of what we've gone through. But I worry that they're going to be weaker and less trusted by the American people.

... In the end, he had to fire Flynn, and the reason he had to fire Flynn is because the emails came out in the press. So the systems, the checks and balances are working. And when the Trump Tower story came out, they had to redefine the way that their story, basically—is that important? Is that—in fact, does that back up your belief that the system is holding?

... One of the remarkable things about Trump is that almost every single one, if not every single one of his inclinations to break norms, or especially to violate the law, have been checked. He's broken norms in trying to break the independence of the Justice Department, and he's failed. So it's remarkable that these institutions have held. One of the reasons that they've held is because the American people know what's going on, and that various other actors in the government have stopped the president from doing the things he wanted to do. Comey, people in the White House, the White House counsel threatened to resign over certain actions that the president was taking. People in the Justice Department have stood up to him. People in Congress, on both sides of the aisle, especially in the Senate, when they learned about these things, have stood up to the president.

Undergirding all of this, and crucially important, is the role of the press, because the press is what gives us the information, gives the American people, the public the information about what's going on. If we didn't know what was going on, the institutions of the government couldn't stand up to Trump, as they actually have been doing, to a great extent.

You could say, looking at what's happened in the courts, looking at what's happened with the bureaucracy, looking at what's happened with even Congress has stood up to the president in some important times, looking at people of his political appointees, looking at the way the media has been super-aggressive in covering the president, you could say that we have this extreme norm-breaking president, and that even in the face of that extremity, the system has worked.

... And there is this question that you've written about, about a deep state, that you said there actually is a deep state. But this is one of the big things that the president is irate over, and goes out and just rallies and talks about it, and says: "There's a friggin' deep state out there, and it's trying to bring me down. And it's all throughout the FBI, and it's all throughout..." Describe for me where the president is right, where he's wrong. I mean, what's going on here?

Well, when I say that there's a deep state, I want to be very clear that I'm using that as a neutral term. There is a permanent bureaucracy. There's a permanent bureaucracy in the intelligence and law enforcement, and they have a deep commitment to a set of norms. And those norms transcend administrations, and they take them very seriously. That is the neutral definition of the deep state.

There's also, on top of that, a set of elite groups of people who come as political appointees on top of the bureaucracy. Whether they're Republican or Democrat, they tend to know each other; they tend to have grown up in the same institutions; and they tend to have a persistence of outlook and a persistence of commitments. In that sense, there is this thing—you could call it the deep state if you like. There's this permanent bureaucracy, and on top of that a set of political officials who are kind of, even if they're in different parties, kind of share norms about how the intelligence community and the law enforcement agencies should be run.

In that sense, I think it's undeniable there's a deep state. It's also true—and these institutions are protectors of certain norms. There's a reason why we have a permanent bureaucracy. They are there to transcend administrations, to make sure that there's a kind of stability. There's always a tension between every new administration and the bureaucracy, especially when it's a Republican administration, but even in Democrat administrations. There's always a tension there.

What's been unusual here is not that the deep state and these institutions have been leaking. But it is true that many of the things that have been most damaging to Trump that we've learned about have come through the types of leaks from the deep state that themselves violate norms. There are leaks, and there are leaks, as President Obama said. Some leaks—and there are illegal leaks, and then there are illegal leaks that violate norms.

Let me try to explain. Leaks of classified information are commonplace. I would argue that sometimes, even though it's a violation of law, it serves an important purpose to the extent that it exposes illegal wrongdoing. Many of the reforms that we had under the Bush administration, of practices that the American people deemed, and Congress deemed to be wrong, and the courts deemed to be wrong, occurred because of leaks of classified information.

In some sense, leaks can serve a very important accountability role. The combination of people inside the government giving information to the press—sometimes it's terrible, and sometimes it's unjustified, and sometimes it's hurtful to national security. But it's undeniable that it still plays an important role. And it's often very helpful. We've had more of that than ever under Trump, and we've had different types of leaks than we've ever seen before. We've had leaks of foreign intelligence information that involved U.S. persons, disclosure of information about U.S. persons, Flynn and Kushner and the like. These are figures that many people in the country don't like. So we've kind of given a pass to these leaks.

But the fact is, these are serious norm breaches by the bureaucracy or whoever is leaking them, because they violate norms that have been just as important since the 1970s as the norms involving independence of the Justice Department, namely the protection of U.S. person information, and the idea that you don't disclose foreign intelligence surveillance information, especially involving foreign powers like the Russians, where it would disclose how you got the information. These are very damaging leaks, from the perspective of national security and norms.

And frankly, the president is right, and the critics of these leaks are right to complain about them, especially since there's an independent investigation going on. There's nothing in those leaks that Mueller doesn't have access to. So those leaks, I think, were particularly unjustified, and yet they've served an important accountability role.

So just sort of a summation of that. There's two ways to spin this, one in a positive way, and one in a very negative way.

I would say both, yeah. Go ahead.

Then the president, of course, is talking in the most possible negative way, because he's smart. I mean, this is a political fight, and he's in it to win it. Just explain that element of it.

The president is going to use every tool he can, because ultimately, this is a political fight. He sees clearly the Mueller investigation as an attack on the legitimacy of his presidency, and possibly an attack on the continuance of his presidency, so he's using every tool he can to fight back. Frankly, so is the bureaucracy, or whoever is doing the leaking of the highly classified foreign intelligence information. It shows the alarm that the bureaucracy has about what's going on in the presidency, that they would take the leaks to this really new ground and new level. It's, in some sense, a reflection of what they see the stakes as, to want to expose the things that they've been exposing.

But we shouldn't overlook—and the president is, in my judgment, right to criticize those leaks. I mean, he does so in a way that's so crass and self-serving, he can't begin to articulate the principle at stake, because he doesn't understand it, but there is a principle at stake. And the worry is, we talk about a lot of the norms the president is violating. One worry is, is that the norms that have been violated in response to the president's norm breaking are also very corrosive and bad, and the worry I have is that those norm breaches are going to continue after the Trump presidency.

I don't think we're going to see another president who's going to come in, anytime soon, and be so vicious in attacking his subordinates in the executive branch. It's just not rational, frankly. In many respects, it hurts the president. But now that the bureaucracy, the national surveillance, the national intelligence bureaucracy has seen how really consequential and harmful to the executive branch and the president that these leaks that used to be completely verboten can be, one worries that they'll continue to do that for the next presidency.

That takes you back to J. Edgar Hoover in a very different way. J. Edgar Hoover used to collect secret intelligence and try to use that secret intelligence in a way to influence politicians. And that was entirely legitimate. It was one of the things we tried to get rid of in the 1975 reforms that were also related to Watergate, and this is really the first time when we've seen the bureaucracy using these types of leaks to try to really bring down a president in a way that I think is especially unjustified.



And the Trump Tower meeting in June of 2016, with the Russians coming in, and the glee about getting dirt on Hillary and stuff, and then the leaks that came out about the emails, is this one of those moments where the deep state saw a real problem? Just give me your summary of why is it that that event seemed to be—

There's a central problem here. The public doesn't yet know what Mueller knows or what the intelligence community knows about the real relationship between the Russians and the Trump team. It's pretty clear, however, that there are a lot of people who have been involved in this, who are clearly worried that there's an inappropriate relationship there. Now, if you think about it from—it's hard to imagine anything worse. I mean, we're talking of concerns in the realm of a Manchurian candidate or something like that. I'm not saying that's the case. We don't know yet. It's pretty clear that there are people that have concerns like that. Whether they're justified or not, we don't yet know. And I think it's the extreme nature of what they perceive in secret, and what they worry about in an extreme way, that's causing them to do these things to break these norms.

Now, one hard question: Trump supporters would say that's just the elites trying to preserve themselves. They really don't like Trump, because Trump came in to try to bash those people. And this is not about Russia; it's about a threat to their dominion.

And thus the fight we watch every day.

That's the fight we're in right now. And you could see, at another level—and this is another point to make. And unfortunately, I think, a lot of the—when the national security bureaucracy leaks these things in an unprecedented way, it undergirds Trump's arguments. Look, these people have too much power. They're breaking the law. They're clearly coming after me because they see me as a threat to them. In a way, that empowers him with his supporters.

When you have former national security officials going on television and engaging in political attacks on the president, which I'm sure they believe and are saying in good faith, but to a good chunk of the country, that looks entirely inappropriate. It looks like they're going after the president who came to town to try to rid of us those people, those people who made mistakes in the Iraq War in 2003, those people who have clearly shown prejudice against the president. It, in some sense, all of that fans the flames. And this is an example of Trump's extremes, in terms of norm violation, invite extremes back. It's not just the bureaucracy. But it invites these norm-breaking behavior[s] and response[s] in a way that helps Trump, and in a way that hurts our institutions, because it is also a part of fostering distrust in these institutions.

It will be very hard to say, going forward, that we have a nonpartisan national security bureaucracy. That's going to be something that's just going to be very hard to get back. I don't know who to blame for that. I think the prime mover cause is Trump, but there have been a lot of people involved, and the response of Trump is also very, very corrosive.

So let's just poke at this for one more second. So when you have the Brennans and the Clappers and everybody coming out and saying what they've been saying—

These are people I admire, obviously.

Right. Why are they doing it? And how does it play into this idea that Trump's law, which is our definition of it, versus rule of law, is winning?

It's an interesting question why [former CIA Director John] Brennan and [former Director of National Intelligence James] Clapper are going on television and overtly attacking the president, and basically accusing him of all sorts of terrible things. ... The interpretation that the Trump team would give it, I'm sure, is these are the last gasps of these permanent bureaucrats, these elites who have been running our country and ruining our country, and doesn't this just prove the extent to which Trump's fundamental critique of the government is right? To the extent that narrative takes hold with a good chunk of the Trump country, Trump wins....

Yeah. It all ends up depending, really, on what Mueller has. If Mueller doesn't have much—

Let me give you my thoughts on that. It was not clear what Mueller could have at this point that would turn Trump's supporters against him. But what I worry about, the way Trump has set this up, "No collusion, no collusion, no collusion," that if Mueller doesn't come out with evidence of collusion of the president, if he comes out with Trump committing legal violations in his businesses, with Trump trying to obstruct justice, with some of Trump's subordinates, as we know, being criminals, that's a lot of bad stuff that would destroy any other president. In fact, any other president would have been destroyed by this point with the stuff that Mueller has found, in terms of the criminality on his campaign.

But if that's all Trump has, and it doesn't somehow connect to the president and collusion as Trump has defined success, I feel like it's going to embolden the president and the argument he's been making, that this whole thing is a witch hunt. That's the genius in what Trump has been doing. He's setting that up as the standard of judgment.

And Mueller has what he has. We'll see what he has. And I'm quite sure that he's playing it straight. He's going to find everything he can and report it to the American people, one way or the other. And we'll see how it plays. I just don't know what he has.

There's a moment in the summer of 2017, and it goes on, really, until the spring of 2018, where Ty Cobb and [John] Dowd [are] brought in as his lawyers. They're working with Mueller, and they're cooperating, and they're telling the president: "It will all be over soon. Don't worry. By Thanksgiving, by Christmas." He seemed to have recalibrated things in sort of that period of time, and then it all sort of goes south soon after that. What's your thoughts about that moment within this chronology that we're talking about?

Like everything else, it's really hard to know. I mean, if we were dealing with a rational president, one would say Ty Cobb was cooperating because there was this judgment that, ultimately, the president—maybe his subordinates had done something wrong, but ultimately the president didn't have anything to hide. And the way to end this thing quickly, and the way to get complete exoneration of the president is to open everything up and cooperate and show that we have nothing to hide.

Then there was a switch when they became more confrontational. And one, if it were a normal president, one might conclude, well, they found something to hide, and now he's switched to a different strategy, which is discrediting Mueller. That's how one would read this if one were dealing with a normal president.

With Trump, it's just very hard to know. I have to say that the fact that Cobb was cooperating for so long, and the fact that so many people around the president, who know the truth of these matters, have stayed there, they have suggested to me, thus far, that maybe there's no "there" there in terms of Trump's ultimate culpability vis-à-vis the Russians, and that everything short of that, they just want to get it over as quickly as possible.

And that's, I think, the right way to read that. What's happened since, with the more overt attacks and the seemingly less cooperation, who knows what that means? That might mean that they know—it could be that the President does have something to hide, and they're trying to discredit Mueller. It could be that they have decided that, even though the president doesn't have something to hide, we should discredit Mueller. Frankly, it's all speculation at this point. Sorry.

... Let's jump ahead to April 9, 2018. Michael Cohen's offices, his home, his hotel room is raided. How big a point?

This is not by Mueller, though.

Right. We're going to talk about that. But it's because Rosenstein had approved it, and Mueller was involved in that decision. How big a moment is that? Why is that important to see? How would the White House view that? Is that possibly the reason—well, 10 days later—[Rudy] Giuliani is brought onboard, and the new philosophy is in full force.

I think there have been two very bad turning points for the president in this investigation. The first was when he fired Comey and Mueller was appointed, because at that point, the stakes are raised. You now have an independent counsel who's going to be looking much more aggressively and much more broadly. That was one major turning point.

I think the Cohen matter was another, because this was clearly someone who was a very close adviser and attorney to the president, and he was especially involved in what might be seen as the president's shady business. I don't know whether there's any connection there in terms of the Russia investigation. But the way these investigations work, you investigate, you investigate, you investigate, and then you come upon a crime, or maybe evidence of a crime, that's unrelated to the purpose of the investigation, and then that goes off and has a life of its own. That seems to be what's happening here.

It's a whole other avenue of potential exposure, criminal exposure to the president. TRUMP'S SHOWDOWNNow, ultimately, if it doesn't have anything to do with Russia, and who knows what they've got, but if it doesn't have anything to do with Russia, it might not be—the President has at this point survived so many hits in terms of things he's done that are inappropriate, immoral, maybe illegal, certainly inappropriate, that maybe that won't harm him while he's the president. Who knows? But it does open up—and also, especially if he flips, if Cohen flips, it opens up a whole new area of, who knows how broad the exposure is for the president? I think it's a very dangerous moment for him.

Now, some people say that, also, this is one of the reasons why the president is perhaps very angry about this, and how dangerous it is to him. Some people say that it's possibly more dangerous than the Mueller investigation itself, is because what it does open up is his involvement in the New York real estate world.

Exactly. Yes.

Very questionable area.

Yes, exactly. I mean, he's been in the New York real estate world for 40 to 50 years and has a reputation for shadiness. And now there's an investigation focused on one of his kingpins in that world. And who knows? You know, not just New York, but it's his global business. And there are all sorts of laws about money laundering and influencing foreign officials and all—and illegal wire transactions and the like. The legal exposure, given all of Trump's transactions, it just takes it into an entirely different realm. It takes it out of the realm in some sense of focusing on his presidency, and it really is a launching pad to focus on his business.

And again, politically, I don't know how much that will harm the president. No one has thought that Trump was an angel. And it might even help the president in the sense that it seems like a witch hunt. Legally, ultimately, it's bad for him.

No matter what, though, it seemed to have changed the strategy of the White House. Giuliani is brought on 10 days later. Giuliani is immediately on television, supporting his boss. Basically he's saying that this is a political fight, and if this ends up in a red/blue fight, we're going to undermine the folks that we think are playing a dirty, corrupt game to bring down the president. The cards are on the table.

Stakes couldn't be higher. I mean, Trump's presidency is at stake, and he's going to use every single tool he has, including political tools. One thing we know about this president: He doesn't care about collateral damage, and he doesn't care about collateral damage on his associates, and he doesn't care about collateral damage on American institutions. And so the stakes could not be higher. TRUMP'S SHOWDOWN And it will be scorched earth, and scorched earth probably benefits the president, at least among his supporters.

A lot depends on the November elections and whether the House and Senate become Democrat, because then the impeachment calculation might change. But it's not good for the president. And I'm sure the president is going to react, as Giuliani has made clear, with every single tool they have, including all the vicious ones.

... Let me just say, I'm quite confident—this is based on my time in government. I'm quite confident that the people in the Trump camp are—they really do believe they're being given a raw deal. They really genuinely believe that there is an elite group out there, even though they're Republicans, even though it's Rosenstein that appointed Mueller, even though Mueller is a Republican, even though that it is the Justice Department is Republican, I'm quite confident that they genuinely think that there is a group of elites out there who are trying to stage a soft coup against the president, who are offended by the president's election, and who have been engaged, ever since, in violating their own norms, to try to undermine the president.

That's what they think, and that's what a lot of them think. From that perspective, actions that from other perspectives might be seen as bad faith might be, in their minds, [seen] as, we're going to use every tool we can to stop this illegitimate action and anti-Democratic action from happening. There is another way to see this, and that's the way that a lot of Trump supporters see it.

What the president is doing at this point is going out and doing political rallies again. ... What's the effect?

The really extraordinary thing about the Trump presidency, this is a president who has literally turned the Republican party upside down. Things that the Republican Party used to stand for, for a very long time—free trade, NATO, support for law enforcement and the intelligence community and so forth and so on—he's completely flipped it on its head, on a dime, and on top of that, he [Trump] has stronger support among Republicans than just about any president of the last eight [years].

... He's caused a lot of politicians to cower before him, politicians who otherwise are people of integrity and otherwise don't agree with any of this. And they've gone along because he controls the politics of his party, including their ability to get re-elected. It's really an amazing thing.

#### TRUMP'S SHOWDOWN

Let's talk about [Alan] Dershowitz for a second. We did an interview with him, so he's in the film.

I admire Dershowitz.

Well, explain what he's doing. Explain this philosophy a little bit of basically—Article II of the Constitution basically defines the fact that he can fire anybody he wants to fire; he can pardon anybody he wants to pardon, including himself; he can end any investigation he wants. Describe what Dershowitz—number one, what he's saying, and what rings true, what doesn't, but also, why Dershowitz is doing this.

Let me answer the second question first. This is what Alan Dershowitz has been doing his entire career, taking on unpopular clients and defending them from prosecutorial process. He's done this his entire career. I have no reason to think he's acting in bad faith. I think he believes every word he says in defense of the president. Dershowitz has a constitutive distrust of prosecutors and a longtime distrust of independent counsels and special counsels. He's been very consistent about that.

So I don't think that there's anything unusual about him in terms of his career taking an unpopular client and defending his civil liberties from what he views as an out-of-control prosecutors. In some sense, that's a description of Dershowitz's career.

Second point is why he's doing it, and why he's—I mean, he also is someone who enjoys being in the spotlight, and here he's been able to combine his genuine commitment to civil liberties with being in the spotlight. Why he's choosing to do this and take the heat he's taking, who knows? But I think that's probably evidence that he really believes it, and he thinks there's an important principle at stake.

As for his Article II arguments, that the president has complete control to fire Comey, and it's hard to subject him to obstruction of justice, I have a lot of sympathy for those arguments. There's much more to those arguments, and there's much less clarity in the law about the extent to which Mueller can prosecute the president for exercising one of his presidential prerogatives than most of the reaction to Dershowitz has let on. And the truth is, is that this is a very murky area of constitutional law, when you have, on the one hand, you have a set of criminal statutes, and you have a special counsel who's pursuing the president. The president is constitutionally over the Mueller investigation, maybe through Rosenstein, but he's over that investigation. And the president has lots—what if the president genuinely believed that the Mueller investigation was really going to harm a very important foreign policy initiative he has with the Russians? Stated at that level of obstruction is the president's call to say:

"Ultimately, this is my administration's priority. I am the chief executive. I was elected to conduct foreign policy, and this is getting in the way. I'm doing the trade-off and saying you have to stop."

At some level, that's a very powerful argument. There are arguments on the other side, but I'm quite confident that those arguments are murky, and that we really don't know what the law is on this area. It's never really come up like this before. I'm more sympathetic to Dershowitz than most people.

There's a week in July which recently took place, July 12, it sort of starts off with the [FBI Deputy Assistant Director Peter] Strzok hearings. You've touched on Congress's role, the GOP involvement in here. But we're sort of using these hearings to sort of better understand that. The GOP, like more than any other time, this is one of those points where it seems to be exaggerated, is in full support of Trump's view about the FBI here. And there's an interesting argument that comes out of here, whether it's sort of laws and institutions are bigger than the man or a man is bigger than the laws and institutions. ... Take me to those hearings. What are you hearing? What is your overview of what's taking place?

I have very little doubt that Strzok, who's a longtime FBI official, that he conducted a rigorous and fair investigation. He's absolutely right that he was not making decisions by himself. He's part of a much larger institution of people below him and above him who are watching him and collaborating with him. I just don't think that there was, in his mind, any discrimination, overt or implicit. So I side with him on that.

And I thought that the House Republicans did the amazing feat of making him look so pathetic, with their really outlandish personal attacks. That said, those text messages of his, which did display personal animus towards the president, and said some things that quite rightly led people to be concerned, those were wrong. I'm not sure they're firing offenses, or that they're illegal. But when they become public, that gives fuel to the Trump narrative about the deep state. He may have acted with complete integrity. I think he probably did. But those messages affect his credibility, and they affect the credibility of the entire investigation to a large chunk of the country. They feed the narrative.

And for the people who are on the side of thinking that there's a soft coup going on, there's concrete evidence that he is one. In fact, he said something like that. So I don't think we can understate the importance of those text messages and other evidences of animus against the president in terms of the larger narrative, even while I believe that that investigation was conducted with complete integrity. Does that make sense?

And the ease with which the president was able to end, and the congressmen in that room were able to define Strzok as being representative of the greater danger from the FBI? .

In many ways, he's an exemplar of what they see as the deep state. He's someone who has been working in the FBI for a long time. He looks like an FBI agent. And he was engaged in what they see as political action against this president, who set out to slay those elites. He's perfectly cast for that role in the mind of people who view the world that way.

[Talk about] the import of the indictment, the fact of the timing of it, what it does to the overview of what it means for the investigation.

I think we on the outside tend to read more into the timing, and try to give meaning to it, than may be the case. First of all, Rosenstein said he briefed the president about those indictments. The president did not put up any objections to him reporting it on the dawn of Helsinki. In fact, there were reports that the president approved it. So that's the first point. The president could have asked him to delay because of the Helsinki conference. It would have looked bad for the president. Rosenstein, I'm sure, would have complied if I had to guess, because it's a legitimate thing. If you're about to have an important conference with Vladimir Putin, you might not want this embarrassment right on the dawn of it. But Trump allowed it to happen.

I don't know, but I don't think that the timing of that happening right after the Strzok hearing was purposeful. On the other hand, Rosenstein, I'm quite sure, enjoyed going out there just before Helsinki, and what an affirmation of Justice Department independence, to be able to announce these indictments about something that Trump says is a witch hunt, and says that the—you know, and sometimes he says, "There's no 'there' there, when it came to Russian involvement in the election." He's been trashing this investigation for over a year. What a statement of DOJ independence for Rosenstein, even with the president's blessing, to go out there and be able to say that. TRUMP'S SHOWDOWN

The Helsinki event, the press conference after the two-and-a-half-hour meeting: What did you see? Of course the blowback, of course, was on the siding with Putin over the IC [intelligence community] and some of the other things he said.

It's very hard to know how to read that. There have been a lot of very smart people who have tried to explain the president's behavior. I could give you my theory. Do you want to know what I think about it?

Yeah.

To me, it is Trump being contrarian. He was told, and he knew that, in some sense, what was expected of him was to stand up to Putin in some respect, and he just changed the narrative when he got there, just like he did with NATO and the others. That's been his impulse throughout the campaign. He was told, time and time again, "If you don't do what this elite adviser says, it's going to destroy you." And he defied them, and he won.

He has a lot of confidence in his judgment. I think he genuinely believes that better relations with the Russians are important. He also pretty clearly has an admiration for strong authoritarians. Whether it was evidence of him being a poodle or Putin having something over him, if that were the case, it's just too obvious a way to bow to that. I'm not sure I believe that that's what was going on. But the truth is, there are 10 possible explanations for that, including probably the best one was Trump had an intuition that he wanted to be nice with Putin and wanted to have a positive experience with him, and he didn't care about the fallout or what his adviser said. But the fallout turned out to be greater than even he expected. So he had this very temporary semi-walk back. But then he was back at it the next day, calling the Mueller investigation a witch hunt, denying Russians being involved in the election. He's not controlled. But one of the hardest jobs I can imagine in this administration is working directly for this president and advising him in the White House.

The White House counsel and the national security adviser—you know, a lot of what Trump did in Helsinki I know was contrary to the long-held views of John Bolton. And I'm quite sure that there was a lot of preparation and practice and discussions about what the president should say. It

looked like he just went off the script. The news reported that Bolton was writing talking points on the way home, trying to control the damage. I can't imagine working for this president. I can't imagine how difficult it must be.

And he was also briefed, as you'd said, by Rosenstein before he went, and the details of those indictments is extraordinary about what they had.

We keep coming back to the same large issue, and that is, but there are these facts in the world. Why doesn't the president bow to these facts in the world? This is a man who does not bow to facts in the world, for whatever psychological reason or political reason or strategic reason. This is someone who defies factual truth and likes to shape the narrative the way he sees the world, unburdened by these factual truths. This is just one of thousands of examples of that throughout the Trump presidency. Right? Isn't that right?

You're asking us?

I mean, isn't that obvious? How do you explain it? In other words, half of your questions have been, "Why did he do this irrational thing?" It's just, who knows? Who knows? Nothing—very little that he does is rational in any traditional sense of what we expect the president to do. So much of what he does, all the norm violations and so much more, is just completely outside the box from the way we have come to expect presidents to act. The way he treats facts, the way he treats his Justice Department, the way he treats the intelligence community, the way he treats members of his party, the way he treats the press—all of it is so completely different, and so much of it is premised on a denial of what is factual truth that it's very hard to understand him. Yet the giant puzzle is, he keeps succeeding in some sense, or surviving and succeeding in large part.

But others in the DOJ, and the way the game is being played on the media, and rule of law folk are sort of using some of the same tactics that Trump has been using.

I would put it slightly differently. I think the people in the Justice Department and the Mueller investigation, or the Rosensteins of the world, or at least since the memo about Comey, they've been playing it straight. I think they find solace and power in playing it by the book and just following the rules, and doing their jobs, and putting their heads down, and trying to ignore the president.

That said, the president has a magical power in his violation of norms and his corrosive behavior and his corrosive language and his attacks, to induce the people and institutions that he attacks, to in some sense, descend to his level. We've seen an incredible coarsening of discourse among all the institutions and actors we're talking about since the Trump presidency. It's as if they're the people who are responding to him are both discombobulated and angry, and it's as if, if he does that, then that's what the new rules are; we're going to do that.

And he's seen as such a danger and such a threat to norms and institutions, and maybe even the law, that people have done things that violate norms themselves. Journalists have done an extraordinary job of covering Trump. They have also done an extraordinary job of feeding his narrative that they're political. The Twitter feeds of many mainstream journalists are openly contemptuous of the president. They go on cable shows, and they're openly contemptuous of the president, and then they write news stories that have a higher quotient of opinion in them than they used to.



This is just a piece of reality in the post-Trump world that—and the media is in a terrible position because they don't know how to act. They can't back down from covering him, but they've really been struggling, struggling with how to cover him. Whether it's OK to say the president lied, that's a big line.

The New York Times has a couple of times said the president lied. There were days of discussions and a lot of controversy about saying that, because it crosses into a world where the Times had a rule that you don't basically say that, because there's so much posturing in politics, and because it really makes them seem like they might be biased, and it feeds the bias narrative.

But on the other hand, if they don't cover the president aggressively, they're basically ratifying him. So the press is still figuring out how to cover the president very aggressively, as is appropriate, while at the same time—and this is very hard not seeming oppositional to the president in a way that undermines their legitimacy and confirms the president's narrative against them.

And it's not only the press.

It's not just the press. It's the national security bureaucracy as well, who have been leaking in ways. We've always had leaks. We've always had leaks of classified information, but we've never had the types of leaks of intercepts, of foreign governments involving U.S. persons, that both reveals the ways in which we monitor and intercept communications from our adversaries and violates the privacy of those individuals. That was a super norm that you just don't do that; ... you don't even do it in secret.

But all of this undercuts the institutions, undercuts the parties, undercuts the press. This is a tragedy.

It's a tragedy. I agree, because we're eating ourselves. Our institutions are devouring themselves. I wouldn't even say the president is the main cause. In some sense, the president was elected because this was already happening, and he took advantage of it and tapped into it, this idea of suspicion of elites, and the idea of the corrosiveness of our discourse. But there's no doubt that the president has comported himself in a way, since he was president, that has induced or invited these responses.

And the president's direct attacks harm these institutions. The responses by these institutions harm these institutions, because they feed the president's larger narrative. Everyone is more agitated. We have communication tools that allow us to express this agitation, and in fact encourage us to express this agitation in extreme terms. All of these factors are coming together in a way that is indeed tragic for our institutions, because we're really devouring ourselves.

And what happens if Trump is elected again?

I wrote a piece in The Atlantic last fall in which I said that I was fairly confident that the norms of the presidency that Trump is violating will snap back and remain firm after he leaves office, because, I said, they will not have served him well, and because I think, in fact, his violation of the norms have not been successful, at least in terms of the Justice Department and the rule of law. He's failed. His norm violations have not led to a destruction of those norms. They've still held.

I think the rule of law has held up well under the first two and a half years of the Trump administration, very well. If the president is re-elected in 2020, that will be an affirmation by the American people that what he's done is acceptable, and it will give him—he will have presumably kept doing this for another year and a half, and it will give him four more years to continue along those tracks.

Ultimately, everything we've been talking about, ultimately, all of these norms, these rule of law values, the integrity of our institutions, ultimately, they all depend on the American people. That's why elections are so vital. Everything we're talking about now—the Mueller investigation, what Trump's doing—these are all intervening events between the elections. The midterm elections are crucially important. We're going to see what the American people think in his midterm exam. I expect it won't go well for him, but how badly it goes will affect the rest of his term.

But if he wins in 2020, in the face of all of the criticism he's received, and all the bad acts he's done, and all of the attacks on the institutions that he has conducted, and if the American people nonetheless re-elect him, I think all bets are off for about the future of the institutions and, frankly, about the future of the country.

In the end, though, your attitude at this point is basically the rule of law is winning over Trump's law long-term.

I would say the rule of law is winning—winning short-term. The rule of law has won for two years. I think Trump's law, it remains to be seen. Basically, the rule of law can operate, and it can bring cases, and it can have hearings, and it can hold bad behavior up, and it can maybe get some convictions, although it can't prosecute the president while he's in office. But ultimately, it's the American people who decide. And Trump's law, it seems, is focused on that. It's trying to shape what the American people do in terms of supporting his attack on institutions and violations of these norms.

And lastly from me is, these events, is this like anything else we've ever seen in U.S. history?

There are some superficial similarities between Trump's populism and Andrew Jackson's populism, and to some extent, Jackson was an anti-institutional president. But we've never, even with Jackson, never seen a president this devoted to attacking so many core American institutions that used to be admired and held up as the jewels of our constitutional system. We've never seen a president who lies so much, who changes his mind so much, who engages in crass behavior to the degree he does, who's nearly as shameless as he is.

I think he's an entirely unprecedented phenomenon in American history. That's why it's so hard to predict what happens. ... We don't yet know whether this is just a Trump phenomenon, and when he leaves the stage, whether things snap back to normal or whether he's caused by some really important fundamental shift in the nature of the American polity [something] that's going to outlast him. We don't yet know that, and that we won't know that until after he leaves office.

You wrote a piece for Time magazine about thinking about the Mueller investigation and outcome and the powers of the presidency. Can you give us a reality check?

... Mueller is not going to remove the president of the United States from office. He doesn't have that power, and I'm sure he doesn't have that ambition. The way that the president could be removed, if that's the goal, is through impeachment and conviction by the Senate or through

elections. And both of those involve heavy doses of the involvement of the American people, either through Congress, through their representatives in Congress or through elections.

And that's why, at the end of the day, it's the American people who are going to decide Trump's fate. And that's why so much is at stake in the 2018, and especially the 2020, elections. TRUMP'S SHOWDOWN

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